

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
November, 2005.

In the Matter of the Application of the)
City of Springfield, Missouri, through the)
Board of Public Utilities, for a Waiver of)
Portions of Rule 4 CSR 240-31.065)
Requiring a Billing Surcharge for the)
Universal Service Fund Assessment.)

Case No. XE-2006-0105

**ORDER GRANTING WAIVER AND
CLOSING CASE**

Issue Date: November 3, 2005

Effective Date: November 13, 2005

On September 6, 2005, the City of Springfield, Missouri, filed its Application to Waive Portions of Rule 4 CSR 240-31.065, which requires carriers to charge and collect, as a separate line item on each customer's bill, a Missouri Universal Service Fund surcharge. Applicant states that the amount of the Missouri Universal Service Fund charge for all of its customers is approximately \$50.00 per month. This amount is so small, states Applicant, that it would cost more than twice the surcharge to collect it separately, resulting in a waste of resources leading to unnecessary increases in costs and rates. Instead, Applicant urges the Commission to grant the requested waiver and allow it to simply pay the required amount to the fund administrator directly from its telecommunications service revenues.

On September 8, the Commission directed its Staff to file its Memorandum and Recommendation by October 7. Staff filed its Memorandum and Recommendation on September 28. Therein, Staff states that Applicant is the Board of Public Utilities of the City

of Springfield, the duly established administrative agency that operates the various public utilities provided by the City to its residents. The Commission granted the Board a certificate of service authority to provide intrastate, interexchange telecommunications services in Case No. TA-97-313 on July 11, 1997.

Staff further states that the Board has not, in fact, complied with Rule 4 CSR 240-31.065 because it evidently did not originally understand that the rule applied to it.¹ Once the Board realized that the regulation applied to it, Staff states, the Board filed this waiver application. Staff also states that the Board has remitted all required amounts to the fund administrator and owes no outstanding Commission assessments or annual reports.

Staff recommends that the Commission grant the Board's waiver request. Staff states that Commission Rule 4 CSR 240-2.060(4) allows the Commission to waive a rule on a showing of good cause. Staff states that its opinion is that the Board has shown good cause sufficient to support the requested waiver.

Discussion:

Rule 4 CSR 240-31.065 states:

(1) All applicable carriers shall place on each retail end-user customer's bill, a surcharge equal to the percentage assessment ordered by the commission.

(2) The surcharge shall appear as a separate line item detailed as "Missouri Universal Service Fund."

(3) The surcharge percentage shall be applied to each customer's total charges equating to the applicable carrier's net jurisdictional revenues.

¹On March 17, 2005, the Commission directed its Staff to notify all affected carriers, presumably including the Board, that the surcharge was to appear on customer bills beginning on May 1. *In the Matter of an Investigation into Various Issues Related to the Missouri Universal Service Fund*, Case No. TO-98-329 (Order Granting Staff Motion, issued March 17, 2005). See also the sample notice filed in that case on March 21.

(4) All applicable carriers shall remit to the Fund Administrator the funds received as a result of the application of the MoUSF surcharge. The remittance of all funds received as a result of the application of the MoUSF surcharge shall constitute full satisfaction of a carrier's annual percentage assessment.

(5) No carrier may recover its Universal Service Fund (USF) assessment in any way other than through this surcharge.

Rule 4 CSR 240-2.060(4), in turn, states in pertinent part that "applications for variances or waivers from commission rules" must include "a complete justification setting out the good cause for granting the variance or waiver[.]"

"Good cause" is a "[l]egally sufficient ground or reason."² "'Good cause' depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed."³ In the present case, the Board contends – and Staff agrees – that good cause for the waiver of the cited regulation is to be found in the fact that its implementation will cost more than twice the amount of money realized from it. The Commission agrees.

IT IS THEREFORE ORDERED:

1. That the Application to Waive Portions of Rule 4 CSR 240-31.065 filed on September 6, 2005, by the City of Springfield, Missouri, is granted.
2. That Commission Rule 4 CSR 240-31.065 is hereby waived to the extent that it requires the City of Springfield, Missouri, to assess a Missouri Universal Service Fund surcharge, collect that surcharge from its customers, and show the surcharge as a separate line item on its customer bills.

²*Black's Law Dictionary* 692 (6th ed. 1990).

³*Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963); *Thomas v. Dir. of Revenue*, 136 S.W.3d 875, 878 (Mo. App., W.D. 2004).

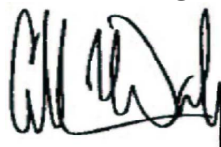
3. That the City of Springfield, Missouri, may remit the amount of the Universal Service Fund surcharge to the fund administrator from funds collected through the City of Springfield, Missouri's base rates.

4. That the City of Springfield, Missouri, shall monitor the amount of the surcharge and, if the amount remitted increases such that the cost of complying with Commission Rule 4 CSR 240-31.065 is reasonable in view of the amount collected, shall apply to the Commission to rescind the waiver herein granted.

5. That this order shall become effective on November 13, 2005

6. That this case may be closed on November 14, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton,
and Appling, CC., concur.
Murray, C., absent.

Thompson, Deputy Chief Regulatory Law Judge